**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF SOUTH CAROLINA**
**CHARLESTON DIVISION**

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| JOSE PADILLA, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | Case No. 2:07-410-HFF-RSC |
| | ) | |
| v. | ) | |
| | ) | |
| DONALD H. RUMSFELD, et al., | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

**INDIVIDUAL FEDERAL DEFENDANTS'**
**NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants Donald H. Rumsfeld, John Ashcroft, Paul Wolfowitz, Lowell E. Jacoby, Michael H. Mobbs, William Haynes, Catherine T. Hanft, Melanie A. Marr, Stephanie L. Wright, Mack Keen, Sandy Seymour, and Dr. Craig Noble (collectively, the "Individual Federal Defendants")[1] respectfully submit this Notice to alert the Court to the Supreme Court decision in *Pearson v. Callahan*, No. 07-751, 2009 WL 128768 (S. Ct. January 21, 2009).

In their submissions to the Court on Individual Federal Defendants' pending Motion to Dismiss, both parties cited to the Supreme Court's opinion in *Saucier v. Katz*, 533 U.S. 194 (2001), which identified a two-step sequence for resolving qualified immunity. *E.g.*, Individual Federal Defendants' Motion to Dismiss, at 26; Pls.' Opp. at 26, 54. In their Opposition to Individual Federal Defendants' Motion to Dismiss, Plaintiffs argue that the Court must first determine whether the

[1] In Plaintiffs' Opposition to Individual Federal Defendants' Motion to Dismiss, Plaintiffs reported that they were withdrawing their claims against Defendant Robert M. Gates in his individual capacity, Pls.' Opp. at 57 n.51, although those claims against Defendant Gates have not been formally dismissed by this Court.

pleaded facts state a claim for a constitutional violation, "and only second to determine whether the constitutional right at issue was clearly established. . ." Pls.' Opp. at 39.

On January 21, 2009, the Supreme Court rendered its decision in *Pearson v. Callahan*, a case in which the *Saucier* procedure was considered. The Supreme Court held:

> On reconsidering the procedure required in *Saucier*, we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory. The judges of the district courts and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.

*Pearson*, 2009 WL 128768, at *9. The Court noted that "there are cases in which the constitutional question is so fact-bound that the decision provides little guidance for future cases." *Id*. at *10. The Court further observed that "several courts have recognized that the two-step inquiry 'is an uncomfortable exercise where . . . the answer [to] whether there was a violation may depend on a kaleidoscope of facts not yet fully developed' and have suggested that '[i]t may be that *Saucier* was not strictly intended to cover' this situation." *Id*. at *11 (alterations in original).

A copy of the *Pearson* opinion is attached.

Dated: January 23, 2009

Respectfully submitted,

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